

SCARPATI INTELLECTUAL PROPERTY, LLC

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March 6, 2023

Via ECF

The Honorable Mary Kay Vyskocil
United States District Court for the Southern District of New York
40 Foley Square
New York, NY 10007

Re: CG3 Media, LLC and Corey Griffin v. Belleau Technologies, LLC, Civil Case No. 1:21-cv-04607-MKV – Narrowed Letter Motion to Seal Motion Documents Associated with Defendant’s Motion for Preliminary Injunction– (ECF No. 34)

Dear Judge Vyskocil:

Pursuant to Rule 9.B of Your Honor’s Individual Rules of Practice in Civil Cases, and pursuant to Your Honor’s Request made within the Court’s Order Denying Preliminary Injunction (ECF No. 65), Defendant/Counter-Plaintiff Belleau Technologies, LLC (“Belleau”) submits the following narrowed Letter Motion to redact certain confidential information associated with its Motion for Preliminary Injunction (ECF No. 34). This narrowed Letter Motion is intended to replace the original sealing requested filed on November 15, 2022 (ECF No. 33). Belleau respectfully moves to redact confidential material in the following: 1) Belleau’s Memorandum in Support of its Preliminary Injunction (“PI Memorandum”) (ECF No. 38); 2) The Declaration of Bryon Wasserman in Support of the Motion for Preliminary Injunction (“Wasserman Declaration”) (ECF No. 36); and 4) The Declaration of Jeremy Sadkin in Support of the Motion for Preliminary Injunction (“Sadkin Declaration”) (ECF No. 37), which are filed concurrently under seal with highlights that denote redactions in conformity with the Court’s Standing Order 21-mc-00013 and Section 6 of the Court’s Electronic Case Filing Rules & Instructions.

These redactions include the following information:

- Two specific dollar figures found on page 6 of the PI Memorandum (ECF No. 38) representing Belleau’s revenue from Q1 2021 and Q2 2022, respectively;
- A bank account number and bank routing number associated with Plaintiff CG3 Media, LLC (“CG3”), found throughout Exhibit 3 to the Wasserman Declaration (ECF No. 36); and

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- The name of a Belleau (PromptSmart) subscriber, found throughout Exhibit K of the Sadkin Declaration (ECF No. 37).

Belleau would suffer competitive harm if this information is disclosed to the public. Belleau is a private company. Its revenues are held confidentially and disclosure of its revenues and other related financial information would cause Belleau and its inventors competitive disadvantage. Similarly, disclosure of customer identities would cause Belleau commercial harm. With respect to the bank account and routing number information belonging to Plaintiff CG3 Media, LLC, public access to this information might expose the Plaintiff to potential theft and/or fraud. For at least this reason, sealing of this information is respectfully requested. Redaction of bank account information is also permitted by both Federal Rule of Civil Procedure 5.2(a), and Rule 9.A of Your Honor's Individual Rules of Practice in Civil Cases.

The Second Circuit has held that disclosure of sensitive information that would cause a competitive disadvantage can overcome the presumption of access. *Standard Inv. Chartered, Inc. v. Fin. Indus. Regulatory Auth., Inc.*, 347 Fed. App'x. 615, 617 (2d Cir. 2009) (upholding a party's "interest in protecting confidential business information outweighs the qualified First Amendment presumption of public access"); *see also Bergen Brunswick Corp. v. Ivax Corp.*, No. 97-CIV-2003-PKL, 1998 WL 113976, at *3 (S.D.N.Y. Mar. 12, 1998) (finding that courts have found good cause for permitting filing under seal where public filing would disclose commercially sensitive and confidential information). Belleau's commercial information is the manner of information routinely sealed in this Court. *See Louis Vuitton Malletier S.A. v. Sunny Merch. Corp.*, 97 F. Supp. 3d 485, 511 (S.D.N.Y. 2015) (granting motion to redact documents containing advertising expenditures and plans, merchandising strategies, policies, and sales); *GoSMiLE, Inc. v. Dr. Johnathan Levine, D.M.D. P.C.*, 769 F. Supp. 2d 630, 649-50 (S.D.N.Y. 2011) (granting motion to seal "highly proprietary material concerning the defendants' marketing strategies, product development, costs and budgeting").

Regarding Belleau's request to redact its sensitive and identifying customer information, this Court also routinely permits redaction of "customer information, including their identities and purchases." *Tyson Foods, Inc. v. Keystone Foods Holdings, Ltd.*, No. 19-CV-010125-ALC, 2020 WL 5819864, at *2 (S.D.N.Y. Sept. 30, 2020); *see also City of Providence, R.I. v. Bats Glob. Mkts.*, 14-CV-2811-JMF, at *3 (S.D.N.Y. Feb. 23, 2022) (citing *United States v. Amodeo*, 71 F.3d 1044, 1050 (2d Cir. 1995) ("[T]he privacy interests of innocent third parties . . . should weigh heavily in a court's balancing equation.")).

Similarly, Belleau is obligated under this Court's Protective Order to prevent disclosure of information designated as Confidential and Highly Confidential-Attorneys' Eyes Only by CG3. *See* ECF No. 17.

Belleau's proposed redactions are tailored and seek to protect: (a) Belleau's confidential customer and financial information in the most pinpointed manner possible; and (b) sensitive information produced by CG3 under the Protective Order (ECF No. 17), which Belleau is obligated to treat confidentially. No less restrictive means exist to prevent disclosure to the

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public. Belleau, therefore, respectfully requests that the Court grant its Motion to Seal. Belleau has conferred with counsel for Plaintiff CG3 regarding these proposed redactions, and Plaintiff has no objection.

Thank you very much for your time and consideration of this matter.

Respectfully Submitted,

/s/ Jennifer N. Scarpati

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